

ESTTA Tracking number: **ESTTA344588**

Filing date: **04/28/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	John P. Avlon
Granted to Date of previous extension	04/28/2010
Address	5th Floor 29 Broadway New York, NY 10006 UNITED STATES
Party who filed Extension of time to oppose	JohnP.Avlon
Relationship to party who filed Extension of time to oppose	The opposer's name was formatted incorrectly.

Attorney information	Carol A. Genis K&L Gates LLP P.O. Box 1135 Chicago, IL 60690-1135 UNITED STATES chicago.trademarks@klgates.com, carol.genis@klgates.com, cristiana.huynh@klgates.com
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Applicant Information

Application No	77514179	Publication date	12/29/2009
Opposition Filing Date	04/28/2010	Opposition Period Ends	04/28/2010
Applicant	Freemon, DeMarcus J 1323 Carlton Ave. Menlo Park, CA 94025 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Publication of electronic magazines, blogs, articles, and interactive literary forums
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77891121	Application Date	12/11/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	INDEPENDENT NATION		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 041. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 Providing a website featuring information and articles in the field of news, politics, media, social issues, public affairs and entertainment; Providing a blog featuring information in the field of news, politics, media, social issues, public affairs and entertainment; Providing an Internet news portal featuring links to news stories and articles in the field of current events</p> <p>Class 042. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 Online forum in the field of politics, social issues, media, news, public affairs and entertainment; Computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking</p>		

Attachments	77891121#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (5 pages)(170882 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ch/
Name	Cristiana Huynh
Date	04/28/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/514,179
Published in the *Official Gazette* on December 29, 2009

JOHN PHILLIPS AVLON,
an individual

Opposer,

v.

DEMARCUS FREEMON,
an individual

Applicant.

Opposition No. _____

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

John Phillips Avlon (“Opposer”) believes that he will be damaged by the registration of INDEPENDENT NATION, Serial No. 77/514,179, by the Applicant, DeMarcus Freemon (“Applicant”), and opposes the issuance of such registration under Section 13 of the Lanham Act (15 U.S.C. § 1063) and Section 2(d) of the Lanham Act (15 U.S.C. § 1052(d)). In support of his opposition, Opposer states as follows:

1. Opposer is a well-known author, television commentator and columnist, whose work is provided across a multimedia platform.
2. Opposer is the author of a book entitled “*INDEPENDENT NATION*” with the tagline “How Centrists Can Change American Politics,” which was published in February 2004.
3. Since as early as 2004, Opposer has used the mark INDEPENDENT NATION in connection with the advertising and promotion of his book, as well as in connection with certain services, namely, providing a Web site that features information and articles in the field of news,

politics, media, social issues, public affairs and entertainment, providing a blog featuring information in the field of news, politics, media, social issues, public affairs and entertainment, providing an Internet news portal featuring links to news stories and articles in the field of current events, providing an online forum in the field of politics, social issues, media, news, public affairs and entertainment and providing an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking.

4. On December 11, 2009, Opposer filed use-based application Serial No. 77/891,121 to register the mark INDEPENDENT NATION for “providing a website featuring information and articles in the field of news, politics, media, social issues, public affairs and entertainment; providing a blog featuring information in the field of news, politics, media, social issues, public affairs and entertainment; providing an Internet news portal featuring links to news stories and articles in the field of current events” in International Class 41 and “online forum in the field of politics, social issues, media, news, public affairs and entertainment; computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking” in International Class 42.

5. Opposer owns the domain names www.independentnation.org and www.independentnation.com, on which Opposer has hosted his INDEPENDENT NATION branded website. Opposer’s domain names were registered and used in connection with Opposer’s INDEPENDENT NATION mark and services since at least as early as 2004.

6. As a result of Opposer’s efforts, advertising and the high quality of Opposer’s book, including numerous high-profile media appearances to publicize his book, Opposer’s book is well-known and the mark INDEPENDENT NATION has acquired secondary meaning as used in connection with Opposer’s book.

7. As a result of Opposer’s efforts, advertising and the high quality of Opposer’s services, Opposer enjoys considerable goodwill in his INDEPENDENT NATION mark. The

public has come to associate the high quality services offered under the INDEPENDENT NATION mark with Opposer.

8. On July 3, 2008, Applicant filed intent-to-use application Serial No. 77/514,179 to register the mark INDEPENDENT NATION & Design for “publication of electronic magazines, blogs, articles, and interactive literary forums” in International Class 41. This application was published for opposition on December 29, 2009 as evidenced by the publication of the mark in the *Official Gazette*.

9. Applicant’s use and registration of the highly similar mark INDEPENDENT NATION & Design for “publication of electronic magazines, blogs, articles, and interactive literary forums,” which are virtually identical to some of the goods and services offered by Opposer or otherwise related to and in the same channels of trade as the goods and services offered by Opposer, is likely to confuse and/or deceive the public as to the source and origin of Applicant’s services and to the existence of any association, connection, sponsorship or relationship between Opposer and Applicant.

10. There is no issue as to priority. Applicant’s application lists a filing date of July 3, 2008. Moreover, Applicant’s application is filed only on an intent-to-use application basis. On information and belief, Applicant’s mark has not been used in commerce earlier than July 3, 2008. Opposer has used his INDEPENDENT NATION mark in commerce since at least as early as 2004.

11. Registration of the INDEPENDENT NATION & Design mark on the Principal Register will interfere with Opposer’s enjoyment of his rights in his INDEPENDENT NATION mark and will result in substantial detriment to Opposer.

12. By reason of Opposer’s continued and exclusive use of his INDEPENDENT NATION mark from a date prior to Applicant’s filing of an application for INDEPENDENT NATION & Design, Opposer has rights in his INDEPENDENT NATION mark superior to Applicant’s rights.

WHEREFORE, Opposer believes that he would be damaged by said registration and prays that it be denied.

DATED this 28th day of April, 2010.

Respectfully submitted,

JOHN PHILLIPS AVLON

By: 
One of His Attorneys

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Certificate

I, Cristiana Huynh, hereby certify that the foregoing Notice of Opposition is being filed through the Electronic System for Trademark Trials and Appeals ("ESTTA") on this 28th day of April 2010.


(Signature)

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Notice of Opposition is being deposited with the United States Postal Service with sufficient postage as first-class mail this 28th day of April 2010 in an envelope addressed to Applicant's counsel at:

Herbert T. Patty, Esq.
938 Alta Mar Terrace
San Jose, California 95126



Cristiana N. Huynh, Esq.